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### Digital Law vs. Analog Lawyers

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# Digital law vs. analog lawyers

*We must keep technology from cutting us off from traditional ways of practicing*

By **Dr. Albert Borgmann**  
Department of Philosophy  
The University of Montana

I have known the burdens and pleasures of lawyering for a long time, second-hand, to be sure, but closely all the same. Our daughter Caitlin has worked at Davis Polk and for the ACLU and now teaches law at the City University of New York. Our son-in-law, John Lovi, is partner at the New York office of Steptoe & Johnson. Many of my students have become lawyers and have told me of their experiences.

Technology is a topic I have thought and written about for a very long time.<sup>1</sup> These two currents, technology and the law, have been running through my life side by side until in the summer of 2007 Mark Parker, a former student and now an attorney in Billings, brought about a confluence when he invited me to talk about technology and the law with present and former officers of the State Bar of Montana.

In the fall of 2007, eight of us met for dinner at the home of Patti and Jock Schulte.<sup>2</sup> I was primed for the occasion by what I had learned from Caitlin, John, and my students, particularly from Don Harris, also an attorney in Billings, and by half a dozen articles from law journals that Don had sent me.<sup>3</sup> The dinner was as convivial as it was instructive.

Lawyers are conflicted and confused about the role technology plays in their lives, and their attempts at clarification that I'm familiar with have been thoughtful for the most part, but not successful. Most lawyers do understand that technology can be a problem either as the subject or as the background of their practice. It's their subject when they litigate issues of electronic surveillance or copyright infringements on the Internet. It's the background of their practice when they use a computer, a cell phone, or PowerPoint.

**MY CONCERN HERE IS** with technology as the background or context of the practice of the law. But even when this is understood, the force of technology typically escapes comprehension in two ways. It unravels into particular problems – how to deal with e-mail or with videoconferencing or with tracking billable hours. Or technology is declared to be just a tool, and we simply have to learn how to use it. The problem on that view is no longer technology, it's our attitude.<sup>4</sup>

It is crucial to understand that to cope with technology in a



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conscious and conscientious way we need to recognize it as a coherent phenomenon. As such it could be called something other than "technology" – "the dominant culture" or "the temperament of our times." But "technology" is a helpful term because it recalls and gathers the technological devices and procedures that are characteristic of contemporary life. Lately, the meaning of "technology" has been sharpened to refer to the most recent and distinctive version of technology, viz., to information technology, and it's technology in this sense that has especially bothered and bewildered lawyers.

At times I'll be talking about technology as though it were a cultural force in its own right and had simply overwhelmed us. This is nothing more than a convenient and short-hand parlance for the comprehensive approach to reality that most of us have implicitly agreed upon, are responsible for, and should reevaluate. Within this implicit agreement, our attitudes are overwhelmed by the regime we have agreed to. Hence we need to make the agreement explicit, and we have to reform it. A reform, as I will argue, has to be a collective enterprise. It's crucial, then, for philosophical reflections on technology and the law to be guided by an incisive and comprehensive understanding of technology, but it's just as important for philosophers to meet people, lawyers in this case, where they actually live, amidst their actual confusions and hopes. There is no sense in doing what philosophers do all too often – answer questions that no one has asked except fellow philosophers.

So before I launch into what I take to be the law, technology, and the connections between them, I want to list the concerns that lawyers appear to have about technology in that broad cultural sense. There are pleasures as well as complaints. As for pleasures, the older generation that has lived through the change from typewriters to word processors recalls the horrors of having to modify a long already-typed document, the time and labor it took secretaries to type the whole thing again, often under the pressure of time. These old-timers were delighted with the ease and instantaneity of word processing.

Similarly, there is praise for the availability of materials through Westlaw, Lexis, Nexis, and others not only spatially in that lawyers can now have instantly on their computers what once was miles away or entirely inaccessible, but also structurally in that material can be collected, sorted, and compared in seconds when previously that would have required hours.<sup>5</sup> And some lawyers look forward to yet more economy, transparency, and efficiency and to yet more assistance from information technology.<sup>6</sup> This whole development is sometimes greeted, with a note of satisfaction, as the democratization of means among rich and poor law firms.<sup>7</sup>

The shadow that falls on these feelings of liberation and enrichment comes from complaints about less comity and more work.<sup>8</sup> There is less social interaction, less mentoring of neophytes, less mutual acquaintance and respect. The old collegiality, to be sure, was based in part on homogeneity of gender, race, and class. But the greater inclusion of women and minorities could have enriched comity, and we need to understand why the opposite came to pass. Meanwhile work has been expanding into all the spaces and crevices of life, reducing time for family and leisure. At the same time the quality of work is thought to have become thinner, more specialized and more stereotyped.<sup>9</sup>

**TO UNDERSTAND** what is both enhanced and imperiled by technology, we have to have a rough agreement on what is meant here by the law. It's the legal profession and its obligations that are at issue. In the common understanding, a profession contrasts with a business, at least in degree if not in kind. A profession is typically self-regulating, committed to rational procedures, and entrusted by society with a precious good – physicians with health, teachers with education, and lawyers with justice. A business is regulated by the law of supply and demand. It uses all legally admissible methods to sell what can be sold and in the process to maximize profits. A crucial consequence of these differences is the way people are dealt with by business people and by professionals. For business, people are customers. For the professions, people are patients, students, and clients. A customer tells the business person what to do. A doctor tells the patient what to do.

Isn't that patronizing? What about an individual's autonomy? Very often, when someone comes to see a lawyer, he is distressed and confused. Some crucial issue is at stake, and the client isn't sure what to do. He has come to look for help, not to assert his autonomy. The lawyer then takes over the client's burden. To be equal to the burden, she needs fortitude, and to give the right advice, she needs wisdom. Fortitude and wisdom are virtues as Plato tells us, and virtues, as Aristotle importantly adds, are more than talents. They are habits and skills that have to be gradually acquired and constantly honed.

Having a courageous and wise advocate is a comfort to the

client. But as the lawyer comforts the client, she must gradually engage the client and restore his autonomy so he will take ownership of the course of action and come to be at peace with the outcome. In business, the customer's autonomy is taken for granted from the start. It's called consumer sovereignty. In the professions autonomy often needs to be strengthened or repaired.

Wisdom is the ability to see how the world hangs together in its most important dimensions. In the lawyer's world, justice is at the center of that vision. But a comprehensive vision must include the understanding that justice borders on one thing that is less and on another that is more than justice. The concern that ranks lower than justice is keeping order in society, making sure that all crucial transactions are clearly and feasibly spelled out and executed. Order needs justice, however. A totalitarian society can be orderly, but such an order would be oppressive or worse.

In the context of the legal profession, justice means social justice, and social justice is the fair distribution of rights and opportunities. Rights and opportunities to what? In dire circumstances, the answer is clear – to security, food, and shelter. But as soon as

basic needs and the requirements of civil rights are met, and already when the needs of health and education are addressed, the notion of fair distribution is insufficient. Hence something more than justice is needed – a vision of the *good life* to determine, e.g., what kind and degree of health and education to secure for everyone; and the guidance of the good life is even more needed when a society becomes affluent.

Let me add two points to clarify the issue. First, the question of the good life is not one we may answer. A society inevitably does answer it through the social and material institutions it sets up and has to set up collectively. Second, lawyers are not exclusively responsible for what society has instituted as the good life. But in being the guardians of justice, they always work in the penumbra of some vision of the good life, and their work would become unintelligible without that vision.

**IT'S TIME TO TRACE** the outlines of technology as a form of life. I should warn my sponsors and readers that they may be dismayed to discover how involved and extended the following account of technology is. Let them persist, and let the author fulfill his promise that the account will be helpful in getting a grip on the perils and prospects of the law.

For our purposes here, a helpful way of bringing technology into relief is to sketch it against the backdrop of social justice. Both technology and justice have their origin in the great liberation we call the Enlightenment. We think of the Enlightenment primarily as *political liberation* – breaking the hold of monarchy and feudalism and instituting democracies.

Technology as a form of culture began roughly with the

Enlightenment, and it joined a promise of prosperity to the promise of liberty. The plausibility of this joint promise has largely shielded technology from scrutiny. Who would defend servitude and poverty? It's hard for us to imagine a world where people would accept being a servant and being poor as providential burdens they simply had to accept and cope with as best they could. To the moral sea-change that has made servitude and poverty unacceptable, we should respond with approval and gratitude, and we should dedicate ourselves to bringing liberty and prosperity to everyone.

What gets concealed, however, by these commendable convictions is the freedom that is characteristic of technology. The oppressors and tormentors that technology took on were not persons or classes but the pains and burdens of reality – hunger, disease, and confinement. The childhood diseases that once were the dispensations of unfathomable Providence became intolerable scandals that were to be met, not with prayer and pious resignation, but with research, development, and vaccination. Let's call the liberation from the pains and burdens of reality *technological liberation*; and so the great liberation that inaugurated the modern era was actually the pursuit of two kinds of freedom – political freedom and technological freedom.

**THE PLAUSIBILITY** and, in fact, the moral requirement of technological liberation has undergone a subtle and fatal shift that comes to light when held up against the development of political freedom. A political liberation movement invariably begins as a demand for rights, and rights are always negatively defined as shackles and obstacles that need to be removed. The removal of oppression has for its goal the clearing of space for human flourishing. Technology parallels this development in one sense and decisively diverges from it in another. Political liberation and technological liberation both began with a heroic phase, marked by a vigorous and painful struggle to overcome obvious and intolerable problems. The political struggle came to its official conclusion in 1791 with the Bill of Rights, though that conclusion concealed the ongoing struggles of African-Americans and women, and today of racial, religious, and sexual minorities.

And what of the human flourishing that was to validate the promise of the struggle for rights? Has there been a politics of human well-being and excellence? The policy that began to develop early in the 20th Century was one of opportunity rather than actuality, of political neutrality and individual choice as regards conceptions of the good life. But it's impossible for any society to leave the question of the good life open. We have to make collective decisions about social and material structures all the time, and these structures inevitably channel the typical course of life, obviously in some cases, subtly in others. Technology, having passed through its heroic

phase as politics had, smoothly continued to transform everyday culture and to fill the vacuum of neutrality that politics had proclaimed. It left its heroic endeavors behind and inaugurated a novel style of life when liberation came to be understood as disburdenment and prosperity as the enjoyment of unencumbered pleasures.

**WHAT MAKES THIS DEVELOPMENT** so hard to grasp is the ambiguity of disburdenment. It moves imperceptibly from the righteous via the dubious to the frivolous. Surely the burdens of thirst and dust must be removed by the availability of water, and not just of water that women have to lug from some source to their homes, and not just the availability of tap water of indifferent taste, but of sparkling water from Italy and France, and not just from some big bottle in your refrigerator at home, but in little convenient plastic bottles everywhere and always.

Or consider the pain of emigrants departing from Ireland, not to be heard from on the Emerald Isle for months, and then only known of from letters that took a month or more to cross a continent and an ocean. What a relief when airmail became available and telegrams for urgent occasions. What burdens were lifted when long-distance telephones allowed you actually to talk to your

beloved notwithstanding the panic of getting to the phone, the need to yell into the receiver, and the knowledge that your mother in the old country was paying dearly for every minute. Wouldn't it be wonderful to be able to reach everyone everywhere all the time, money being of little concern?

The affluence we see in the availability of water and communication has spread across contemporary culture. It has transformed transportation, information, food, and entertainment. This abundance of commodities has become possible through the gigantic and sophisticated machinery of technology that intellectually reaches from research and development to marketing, and materially from mines and oil wells to the shelves of Wal-Mart. It's the basis of what we may call the *commodious*, as opposed to the *heroic*, phase of technology.

**THE RADICAL TRANSFORMATION** of reality that the rise of machinery and commodity have effected is difficult to articulate and to clarify for two reasons. One is the ragged line of progress between the heroic and the commodious phases of technology that at any one time presents us with necessary and frivolous endeavors side by side. The other is the smooth and gradual shift from the reasonable (tap water) to the extravagant (ubiquitous Perrier). In any event, the crucial points are two. Technology has made our world, first, more controllable but less intelligible and, second, more affluent but less engaging.

These two issues hang together. The citizens of the affluent

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societies are in control of water. They know it to be safe and everywhere and easily available. But unlike the homesteaders who had to go to the creek to get water, they don't know from where and how their water comes out of their faucets. And unlike the emigrant from Ireland who had a conception of how his mother's writing got down on paper and the letter from her mailbox to his, we today don't know how letters get to be pixels and how pixels get from my screen to yours.

There are two concepts that bring the culture of technology into relief – *commodification* and *consumption*. Commodification is the means, consumption is the end.

**COMMODIFICATION** in a broad cultural sense is the process whereby the burdens of hauling water and putting pen to paper are lifted from our shoulders and transferred to the machinery of a utility or the Internet. In the process, the cultural texture of women meeting at the well or fountain and the habit of gathering one's thoughts to express oneself in a unique hand are torn apart. Typically, also, what gets severed from its traditional context and delivered by the machinery of technology becomes available for purchase and sale. Drawing something into the market is in fact the precise economic meaning of commodification.

The product of commodification is a commodity, again taken in a broad cultural sense – an object or a service that is instantly, ubiquitously, easily, and safely available. Business is devoted to the production and distribution of commodities. Given the central and still growing significance of commodification in our society, business is central and growing as well and it tends to colonize the rest of contemporary culture.

Our working lives are devoted to the maintenance or expansion of the commodifying machinery. Each of us is competent in maintaining or improving a few cogs of the machine and nothing more. The electrician does not understand what the chemical engineer does; the accountant knows little about the skills of a physician. It's the genius of economy and technology that the cogs smoothly engage one another. When they fail to do so, politics comes to the rescue if breathlessly and a little late as a rule.

The reward of all this is the abundant availability of commodities – useful and inconspicuous ones like tap water and glamorous and seductive ones like Godiva chocolates.

**CONSUMPTION IS THE** unencumbered and pleasant enjoyment of commodities. Although such refined and effortless pleasures seem to be the purest fulfillment of desires, a lack of seriousness taints consumption. Work on the machinery always seems to be the more responsible thing to do, and it delays the likely damning test of whether the end is worthy of the means, whether consumption vindicates our labor. The more serious and driven a person, the greater the portion of

time devoted to the machinery of technology (though the consumption of high-achievers makes up in expense what it lacks in time). Recently, social science has demonstrated what moralists have long been preaching – the pleasures of consumption are perfidious and leave us disappointed only to seduce us once again.<sup>10</sup>

**THE LAW IS PART** of the wider culture, and within it constitutes a distinctive culture as well. We should not be surprised that in both regards the law has been invaded by technology. Lawyers have welcomed the liberation from tedious typing, from time-consuming trips to law libraries, and from the slowness of communicating with distant colleagues. They have appreciated the convenient riches of Westlaw and LexisNexis, and some look forward to yet greater freedoms and availabilities in the practice of law. But it's the graying generation of lawyers that feel relief and gratitude, the ones who in their youth had to get water from the creek. For the younger generation, laptops and access to Lexis are as unremarkable as tap water.

Technology, however, has not only aided, but also injured the law. The first injury is the flip side of the benefits of technology. The commodification of information and communication has destroyed the part of the professional culture that was enforced by the need to knock on a door or at least pick up the phone and to go to the law library of a firm or a county where you would run into colleagues and engage them in conversation. There is a rich and commanding presence in face-to-face meetings that no electronic replacement can equal, and such presence is conducive to mutual respect and mental well-being. The commodious availability of electronic information and communication has not only eliminated actual encounters with colleagues but also infected what encounters are still left. Furtive consultations of Blackberrys and the like at actual meetings have degraded the attention and respect colleagues pay one another.

**THE SECOND INJURY** comes from an unfortunate convergence of the machinery and the commodity, i.e., the means and the end of technology. The machinery of technology has given lawyers more control over their work. Sometimes that power is used on associates to enforce large amounts of work by tracking their billable hours. But as often, the control and the maximizing it encourages are self-imposed. Lawyers gravitate toward work because of the uncertain value of the end of technology – of consumption – and the obvious seriousness and gravity of devotion to the machinery of technology – work. Here too they are encouraged by the ever-ready means of information and communication, and such means can be



instantly and ubiquitously available only if they do not depend on the actual presence of colleagues or clients. Such availability, again, favors the much-lamented social isolation of lawyers.

**THE THIRD AND FINAL INJURY** is inflicted on the profession by the affinity of technology with business and the consequent threat of the commercialization of the law. Sometimes that danger takes the form of seemingly reasonable proposals. To make lawyering more accountable and transparent seems like a fair and sensible concern. Paul Caron and Rafael Gely have urged that approach to legal education. Their article endlessly invokes “accountability and transparency.”<sup>11</sup> What counts as success in achieving greater accountability and transparency, they concede, is hard to define.<sup>12</sup> Their solution is to let a competitive market furnish the answer.

Caron and Gely are right in advising against the wholesale rejection of measuring and ranking. But without a vigorous grasp of the law as a *profession* and of technology as a process of *commodification*, accountability will be to customers and transparency will be the rule of an information-gathering machinery. If the profession becomes a business, lawyers – traditionally counselors – are in danger of becoming business agents. When the law is seen as a business, the profession becomes “the legal marketplace” and “[w]hat lawyers need to do is to open new legal markets...”<sup>13</sup> They have to find new niches, and such specialization splinters the profession and obscures the coherence and importance of justice – securing rights and liberties and a space for genuine human flourishing.

For a profession, accountability is as much for *something* as it is to *someone*. For lawyers that something is justice. Since technology advances unevenly, there are still significant areas and incidents where rights and liberties are abridged, or reversed, or simply unavailable. Vigorous action and sometimes heroic efforts are undertaken by lawyers to liberate and empower people. There are in fact not enough lawyers to meet these needs.

**MUCH LAWYERING**, of course, is devoted to the maintenance of the technological machinery, and that too is a necessary and commendable contribution to society. But beyond seeing to order and security, lawyers also work to support and advance the dubious developments of technology. The questionable character of the final commodities and of consumption is usually concealed by the grandeur of the supporting machineries. It would be a grand thing to draw up the papers for the merger of MacDonald’s and Burger King or for the acquisition of one by the other. But the sight of soft drinks

and hamburgers and of what they do to people is less impressive.

By any measure of mental, moral, or physical excellence, our society on average is a decent, but not a good society. Are lawyers responsible for this deplorable state of affairs? In principle no more so than any citizen. But in fact lawyers are better educated and more powerful than most people, and perhaps an obligation goes with those privileges. More directly, lawyers are responsible for the culture of the law. It is widely acknowledged that lawyers are relatively despondent in and about their profession.<sup>14</sup> Reforms are needed.

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When the hauling of water  
and putting pen to paper are  
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the cultural texture of  
‘women meeting at the well’  
and the habit of expressing  
oneself in a unique hand are  
torn apart.

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**THREE THINGS** have to be understood if reforms are to make sense and have a chance. The first is to recognize cosmetic reforms for what they are. To provide concierge services, nanny emergency services, to see to it that “lawyers who work into the evenings can have dinner delivered, on a silver tray, from the Palm Restaurant,” to have some consulting firm employ “a battery of staff psychologists and social workers to provide advice on issues including stress, anxiety, depression and divorce,” all that is nothing more than gilding the cage as long as law firms impose “pretty strict hours,” cater “to their young recruits’ wants and needs, while freeing them [sic] to bill 60 hours or

more a week,” and continue to “rais[e] minimum billable hours over the years.”<sup>15</sup>

The perks may not be a problem for Montana lawyers, but the tendency to work longer hours certainly is. To work on behalf of justice is to secure rights and liberties and a space for human flourishing. If that space keeps shrinking in the lawyers’ own life and if what remains is filled with frenetic and extravagant consumption, a shadow of perversion falls on lawyering itself. Here too lawyers do not bear a particular responsibility. All the elites in American society work injuriously long, if not always productive, hours. We have the paradoxical situation where the best seem to accomplish everything except living a good life.

**THE SECOND THING TO NOTICE** is more subtle, but no less important. We have to understand that commodification has removed the material constraints that once enforced wholesome habits, and again not just in the law but across the life of a community. Walking miles, lifting things, handling tools, working and keeping faith with your spouse, helping neighbors, giving and getting the news in the town square – these things were necessities of life. So was the traditional, if socially biased, comity of the law. Commodification is not going to stop any time soon. Efforts at eradicating inefficiencies through more sophisticated machineries and procedures will continue, and with the arrival of most every bit of streamlining a bit of tangibility and sanity will take its leave.

What used to be supported by material necessity must there-

fore be reconstituted on moral grounds and in a deliberate way. That takes us to the third and last condition of sensible reforms. Attempts at reform on the part of individual lawyers are bound to have narrow limits. Any one lawyer lives in a world not of his or her making. What's needed is collective action in restoring the culture of the law – at the level of law schools, professional corporations, and of the State Bar of Montana. I don't know enough about the practice of the law to be helpful in specifics. But the general task is clear enough – lawyers have to recognize and reject the rule, though not the services, of technology, and they need to reconstitute the law as form to the good life – as a good practice.

**SOME OF THE** necessary elements are clear. One is to secure the importance and integrity of face-to-face meetings. Importance means that certain transactions, enumerated on a list, are too important to be done electronically. Arraignment is an example. Integrity means that the disrespect and distraction of people hiding their faces and activities behind the screen of a laptop or in the BlackBerry stoop will not be tolerated. If electronically available information is indispensable at a meeting, it has to be restricted to some public display. More generally, face-to-face meetings, including lectures and seminars in law schools, need to be protected from every kind of electronic intrusion – phone calls, e-mails, text messages, news, individual information retrievals, etc. A more informal but equally helpful way to reestablish and reinvigorate face-to-face meetings is to provide readily accessible or, better, unavoidable places of actual encounters and to give those places the tangible charm and gracious character that we value in persons.

Depending on the authority of the collective body, measures of reform have to take the shape of enforceable rules or of strong recommendations. Even the latter can be effective. An individual lawyer or two who at some meeting take offense at their e-mailing or BlackBerrying colleagues will appear forlorn or priggish in asking for undivided attention. They will be in a stronger position if they are able to remind their colleagues of what the State Bar of Montana has strongly recommended.

No doubt reform proposals will be greeted with the observation that they may be desirable but are in fact unrealistically expensive and not immediately realizable. But the question is this: Expensive in relation to what? The general poverty of this country? Are we, as a society, struggling to vaccinate people and put bread on the table? We have to remember that the culture of technology is dedicated to commodification, that commodification serves consumption, and that for half a century now the rising level of consumption has not been conducive to greater human flourishing. Hence to plead for more money on behalf of greater justice, especially in the areas of the criminal

The commodification of communication has destroyed the part of the professional culture that was enforced by the need to knock on a door or pick up the phone and to go to the law library where you would run into colleagues and converse with them.

law and public interest, is a proposal to reign in pointless affluence and a plea for a better society.

## NOTES

1. See my *Technology and the Character of Contemporary Life* (Chicago: University of Chicago Press, 1984).

2. The participants, in addition to Mark Parker and Patti and John C. "Jock" Schulte, attorney in Missoula, were Bari Burke, professor of Law at the University of Montana in Missoula; Alexander A. George, attorney, Missoula; Gary J. Graham, attorney, Missoula; Donald L. Harris, attorney, Billings; and Peggy Probasco, attorney, Butte. In revising this paper I have greatly benefited from comments by Caitlin Borgmann, Don Harris, and Mark Parker.

3. William T. Braithwaite, "How Is Technology Affecting the Practice and Profession of Law?" *Texas Tech Law Review*, vol. 22 (1991), pp.1113-57.

Stephen T. Maher, "Lawfutures, Or, Will You Still Need Me, Will you Still Feed Me, When I'm Sixty Four [sic]? *Richmond Journal of Law & Technology*, vol.1, no.1 (1995).

Samuel A. Guiberson, "The Challenge of Technology in the New Practice of Law," *Ohio Northern University Law Review*, vol. 25, no. 4 (1999), pp.563-67.

Arthur Cockfield and Jason Pridmore, "A Synthetic Theory of Law and Technology," *Minnesota Journal of Law, Science & Technology*, vol. 8, no. 2 (2007), pp. 475-513.

Kieran Tranter, "Nomology, Ontology, and Phenomenology of Law and Technology," *Minnesota Journal of Law, Science & Technology*, vol. 8,no.2 (2007), pp. 449-74.

Steven N. Leitess, "Technology Enhances Virtual Law Practice," *Maryland Bar Journal*, vol. 40, no. 4 (2007) pp. 28-33.

4. Braithwaite, pp.1122 and 1157; Guiberson, p. 563.

5. Braithwaite, pp. 1113-15; Leitess, pp. 28-32.

6. Maher, paragraphs 31-38; Paul L. Caron and Rafael Gely, "What Law Schools Can Learn From Billy Beane and the Oakland Athletics," *Texas Law Review*, vol. 82 (2004), pp. 1483-1554.

7. Guiberson, p. 565; Leitess, p. 32.

8. Braithwaite, pp. 1125-26; Stephanie Francis Ward, "Pulse of the Legal Profession," *ABA Journal*, vol. 93, (October 2007), pp. 30-34.

9. Braithwaite, pp. 1125 and 1136-40.

10. Daniel Kahneman, Ed Diener, and Norbert Schwarz, eds., *Well-Being: The Foundations of Hedonic Psychology* (New York: Russell Sage Foundation, 2003).

11. Caron and Gely, pp. 1485, 1486, 1488, 1501, 1502, 1515, 1529, 1547, 1553 (twice), 1554 (three times).

12. Caron and Gely, p. 1501.

13. Maher, paragraphs 19 and 42.

14. Martin Seligman, *Authentic Happiness* (New York: Free Press, 2002), pp. 177-84; Ward, pp. 32-34.

15. Lynnley Browning, "For Lawyers, Perks to Fit a Lifestyle," *New York Times*, 11 Nov. 2007, pp. C1 and C5. A correction has since been appended on the web. If you work late at Cravath, \$30 is the maximum you can spend on a delivered dinner, and the Palm does not deliver; you order through Dial-a-Dinner.